

# **Exhibit A**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

IN RE: AUTOMOTIVE PARTS  
ANTITRUST LITIGATION

Case No. 12-2311

Hon. Marianne O. Battani

**ALL PARTS**

THIS RELATES TO:

## ALL AUTO PARTS CASES

MOTION TO COMPEL DISCOVERY FROM  
NON-PARTY ORIGINAL EQUIPMENT MANUFACTURERS

BEFORE SPECIAL MASTER GENE ESSHAKI  
Theodore Levin United States Courthouse  
231 West Lafayette Boulevard  
Detroit, Michigan  
Thursday, March 24, 2016

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16 Manufacturers:  
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ALSTON & BIRD, L.L.P.(Please note, appearances of attorneys listed are only those  
that presented argument before the Special Master.)

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1      Detroit, Michigan

2      Thursday, March 24, 2016

3      at about 3:15 p.m.

4                - - -

5                (Special Master and Counsel present.)

6                SPECIAL MASTER: It is now 3:15. We have been in  
7      discussions since approximately 9:30 trying to reach a  
8      resolution of some of the issues in the pending motions, and  
9      it is my hope that we will have a partial resolution shortly  
10     which will permit me to adjourn the majority of the motions.

11               However, there is one matter that is going to  
12     require a hearing, and that is with respect to the document  
13     requests served by the serving parties on the OEMs concerning  
14     the production of documents that the OEMs made to the  
15     Department of Justice. And as I understand the request now,  
16     it is that the OEMs produce any documents they produced to  
17     the Department of Justice in any case that is not subject to  
18     the stay. Some of those cases I understand are, in fact,  
19     within this case and they are still stayed, some of them are  
20     not in this case and are stayed. That also excluded would be  
21     any communications between the OEMs and the Department of  
22     Justice in which the Department of Justice was asking for  
23     analyses or projections or assistance in understanding the  
24     data that had been produced by the OEMs to the DOJ, that  
25     would be excluded as well.

1           Mr. Williams, have I hit everything there?

2           MR. WILLIAMS: I believe you have, Your Honor.

3           SPECIAL MASTER: Sir, it is your motion so would  
4 you like to start? Please let's try to keep it to five or  
5 ten minutes.

6           MR. WILLIAMS: Well, I will be very brief. I will  
7 try to start -- to be honest --

8           SPECIAL MASTER: I have read everything.

9           MR. WILLIAMS: -- I'm not quite sure what the  
10 position of General Motors is, I will need to hear from them  
11 to respond very briefly afterward, but --

12           SPECIAL MASTER: Mr. Williams, I suggest you sit  
13 and we'll have General Motors tell us their position.

14           MR. WILLIAMS: Very well.

15           SPECIAL MASTER: I have read your brief  
16 extensively, I have notes of it and everything.

17           MR. WILLIAMS: Thank you.

18           SPECIAL MASTER: Counsel, would you identify  
19 yourself?

20           MR. WOLFSON: Yes, Special Master. My name is  
21 Adam Wolfson, I'm from Quinn, Emanuel, Urquhart & Sullivan on  
22 behalf of General Motors.

23           SPECIAL MASTER: All right.

24           MR. WOLFSON: Special Master, the issue here is  
25 that as we understand the serving parties' position is, well,

1      the OEMs have collected these documents already so they  
2      should just be able to produce it to us. Well, the problem  
3      is that third-party subpoenas you don't just waive burden,  
4      you look at substantial need, you look at relevance, you look  
5      at confidentiality of the materials, whether they are highly  
6      confidential, all of these play into the final decision of  
7      whether to produce.

8                When producing to the Government, they are the good  
9      guys, they are the ones trying to prosecute all of these  
10     parts suppliers for their collusion against the OEMs, the  
11     OEMs are going to be more willing to provide certain  
12     highly-confidential information to the Government than they  
13     otherwise might be willing to produce to the parties in this  
14     case, and that's exactly what happened.

15               One major concern is that there is  
16     highly-confidential information in these materials that  
17     frankly the OEMs do not want to produce, when coupled with  
18     that the plaintiffs or the serving parties have not  
19     demonstrated that they absolutely need this information.

20               Now, they have the DOJ productions from the  
21     defendants. They have all of the documents that these  
22     defendants who are the admitted or accused conspirators,  
23     these documents establish their liability. So to the extent  
24     that additional documents were needed by the DOJ to prove  
25     liability, to establish criminal liability, which is beyond a

1 reasonable doubt, and the OEMs helped with that process, that  
2 shouldn't be used against them in saying now, okay, you have  
3 to give all of that over to us simply because we are in civil  
4 litigation.

5 Rule 45 is clear, if there is a not a substantial  
6 need, if it is highly confidential, if it is marginally  
7 relevant, and that weighs against production here and that's  
8 why there is a serious concern on the part of the OEMs like  
9 GM that have produced a fair amount of documents to the DOJ.

10 A wholesale production is going to create perverse  
11 incentives for victims of conspiracies like this when there  
12 are defendants that are more reticent to settle with the DOJ  
13 or to admit their guilt and DOJ has to go out to the victims  
14 and produce -- have them produce additional documents to help  
15 establish that liability, those victims are going to be more  
16 hesitant to do so if they know that their crown jewels, that  
17 their highly-confidential documents are automatically going  
18 to have to be produced to parties in other litigation.

19 We submit because there has not been a showing of  
20 substantial need on this motion and because there are such  
21 voluminous other DOJ productions from the actual wrongdoers,  
22 a wholesale production here even with the limitations, not  
23 subject to stay, no communication with DOJ. I understand  
24 that there was also something about ongoing investigations of  
25 the DOJ not necessarily being produced, I may be wrong on

1       that.

2                   SPECIAL MASTER: No, that's correct.

3                   MR. WOLFSON: Okay.

4                   SPECIAL MASTER: There was a -- I didn't mention  
5                   though but there was a request for it to be a springing order  
6                   so that in the future if a -- if the stay is lifted as to any  
7                   particular part or part case, that without having to come  
8                   back here the moving parties could obtain that data if I rule  
9                   that they are entitled to that data.

10                  MR. WOLFSON: Well, I think in the context here is  
11                  what we have is the OEMs have offered to produce some  
12                  documents as a compromise. They have offered to produce  
13                  documents to the extent that they were produced to the DOJ  
14                  would not be withheld on the fact that they were produced to  
15                  the DOJ. We have offered to produce certain transactional  
16                  data related to non-defendant suppliers. We have offered to  
17                  produce reasonably accessible information about MSRPs. We  
18                  think that that is sort of the specifically tailored request  
19                  and specifically tailored production that is called for by  
20                  Rule 45 and that is appropriate in this case particularly  
21                  given that the OEMs are the primary direct victims that the  
22                  DOJ was consulting merely because they are trying to  
23                  establish liability of the actual wrongdoers.

24                  SPECIAL MASTER: Counsel, thank you very much.

25                  MR. WOLFSON: So that's our position.

1                   SPECIAL MASTER: That's a good argument on such  
2 short notice.

3                   MR. WOLFSON: Thank you.

4                   SPECIAL MASTER: Mr. Williams?

5                   MR. WILLIAMS: Thank you, Your Honor. I will try  
6 to be brief.

7                   It was a good argument on short notice but it is  
8 not the argument that was in the opposition brief, so I would  
9 suggest that argument was waived, none of that was in their  
10 brief on the specific points. If you look at pages 34 and 35  
11 of the brief that GM signed on to you are not going to find  
12 any of those arguments.

13                  Now, it is instructive to look at footnote 33 where  
14 they say to the extent that protection -- further production  
15 is required it should be limited to ordinary course documents  
16 and not communications, witness statements, summaries or  
17 other materials prepared specifically for any DOJ Grand Jury  
18 investigation.

19                  So as you said at the outset, we are not seeking  
20 their communications with the DOJ other than the pulls from  
21 transactional data that the Department of Justice has told us  
22 they are fine with us having. We are not seeking specially  
23 prepared documents and we are not seeking witness statements,  
24 but you have not been provided any reason to deny production.

25                  And I note among the very first orders

1      Judge Battani made in that case was that productions to the  
2      DOJ would be given to the parties, and there is no reason  
3      here to be different. We don't have to show, quote, absolute  
4      need. We have a protective order in place, and there has  
5      been no identification of how that protective order is  
6      lacking or inadequate to protect the crown jewels. And these  
7      materials were produced to the department, they are not  
8      privileged; they are compared, they have been gathered, have  
9      been produced.

10           Case after case permits the production to civil  
11        parties with very, very limited exceptions that I just talked  
12        about from footnote 33 of documents in civil litigation that  
13        were previously produced to a government entity.

14           These are core documents to us because we need to  
15        go through the chain of distribution from defendants to OEMs  
16        until the parts get to us. This is a necessary part of that  
17        chain, and in the discussion of burden that was just made it  
18        seems this is less burdensome. I mean, they had a compromise  
19        to give us a subset of it but what we are saying is just give  
20        us what you have already compiled. They have not identified  
21        any privileged, they have just identified a policy reason  
22        that perhaps in the future victims of crimes would be less  
23        willing to cooperate with the government if they thought in  
24        future civil litigation such productions may be necessary.

25           That position has been rejected by courts. There

1 is no such privilege like that, and otherwise these documents  
2 are in the core of discoverable information in this case.  
  
3 And the DOJ are good guys but we would like to think we are  
4 good guys too. We represent the class in this case. We have  
5 class cert dates coming. We are here on a motion to compel  
6 today after seven and-a-half months of meeting and  
7 conferring, and to carve out one set of non-privileged  
8 relevant documents that are sitting on a drive and could be  
9 given to us in one week requires more of a showing then  
10 perhaps in the future a crime victim won't cooperate with the  
11 government if you permit us to have these documents here.

12 || Thank you.

13 SPECIAL MASTER: Would you agree -- I don't  
14 remember the precise terms of the protective order, but would  
15 you agree with an attorney-eyes-only designation?

16 MR. WILLIAMS: Certainly, we have no concern about  
17 that.

18 SPECIAL MASTER: Okay.

19 MR. WILLIAMS: And if our understanding is that the  
20 concern is about not necessarily the parties having it but  
21 competitors having it, we would be willing to confer with  
22 General Motors about that concern as well.

23 SPECIAL MASTER: Could you explain that a little  
24 further?

25 MR. WILLIAMS: I don't want to speak for

1 General Motors but I have an impression that their concern is  
2 not as heightened as to me seeing it or counsel for  
3 defendants seeing it, as much as it is another automaker  
4 seeing this information. There is only one other automaker  
5 in this litigation, they are only in one case, and it would  
6 seem that if that is really the core of the concern of the  
7 confidential that there ought to be a way to address that  
8 concern.

9 || SPECIAL MASTER: Okay.

10 MR. WILLIAMS: Thank you.

11 MR. WOLFSON: May I respond?

12 SPECIAL MASTER: Yes, please do.

13 MR. WOLFSON: Thank you, Special Master.

14                   A couple points. The point that Counsel just  
15                   raised about only being focused on Ford, that is -- that's  
16                   incorrect. Their worry is that this is highly-sensitive  
17                   competitive but also just highly-confidential internal  
18                   information that will be going to parts suppliers, it will be  
19                   going to downstream purchasers, it will be in the hands of  
20                   dozens of law firms, that will be in the hands of even  
21                   more -- by multiple more attorneys. This is all the sorts of  
22                   information where unless there is really a substantial need  
23                   for it, and I say substantial because that's actually the  
24                   words that are in the rule, not absolute, substantial need,  
25                   the -- if there has been no showing of substantial need then

1 having such confidential information placed into this  
2 litigation where we are a non-party and do not participate in  
3 the hearings, do not participate in the trial, do not  
4 participate in negotiations between the parties that will be  
5 using this information, that's where the concern arises, not  
6 because Ford is one of the litigants in one of the cases.

7           To the extent that Mr. Williams talked about this  
8 chain of distribution, we don't understand how the compromise  
9 that we have offered fails to satisfy that. There is the  
10 MSRP data that we have offered to produce, there is the  
11 costing data from -- the transactional data from  
12 non-defendant suppliers, but the rest is all information that  
13 should have been produced to the best of the parties'  
14 abilities in this case and therefore we don't see the  
15 equivalence of saying well, the DOJ production helps us track  
16 the chain of distribution on down to the end payors.

17           I believe that is -- one minor point. In our  
18 briefs we did argue that the -- besides the documents that we  
19 have provided, none are relevant and necessary and that's  
20 what I'm arguing now, that it is not relevant or necessary to  
21 produce them but it is a minor point. Those are the issues I  
22 would like to raise.

23           SPECIAL MASTER: Thank you. Ms. Romanenko, did you  
24 have something you wanted to address?

25           MS. ROMANENKO: Your Honor, just quickly, we wanted

1       to verify that attorneys' eyes only includes our experts?

2                   SPECIAL MASTER: Yes.

3                   MS. ROMANENKO: Thank you.

4                   SPECIAL MASTER: Yes. I'm going to -- I'm going to  
5 rule that the productions by the OEM to the Department of  
6 Justice have to be produced. They -- every day in this  
7 country major cases are litigated in which  
8 highly-confidential competitive information is exchanged  
9 under protective orders, and I understand the significance of  
10 this but protective orders are designed exactly to prevent  
11 leaking of that information, so I don't accept that as  
12 argument for not producing the information. I do think it is  
13 relevant, it may also lead to relevant information.

14                  I am going to order that it be produced. I'm  
15 asking Mr. Williams to draft the order with the exclusions  
16 that we talked about. The ones that you've quoted to me in  
17 the footnote, the ones that exclude any information on an  
18 ongoing investigation, whether that case is within this case  
19 or outside of it, and that it be a springing order so that at  
20 any time down the road when Judge Battani lifts the stay as  
21 to any other part or case that is currently subject to the  
22 stay it will automatically permit the moving parties to seek  
23 that DOJ production from the original equipment  
24 manufacturers. And I would like that information to be  
25 produced within seven days after entry of the order.

1           Now, Mr. Williams, as always you have to include in  
2 the body of the order -- at the end of the order that it is  
3 pursuant to the order appointing me Special Master, and it is  
4 subject to review and appeal to Judge Battani.

5           MR. WILLIAMS: Yes.

6           SPECIAL MASTER: Understood?

7           MR. WILLIAMS: Thank you, Your Honor.

8           SPECIAL MASTER: That's all we have for now.

9           (Court recessed at 3:31 p.m.)

10           — — —

11           (Court reconvened at 3:48 p.m.; Special Master and,  
12           counsel present.)

13           SPECIAL MASTER: All right. We are on the record  
14 at this point, and we are addressing the pending motion to  
15 enforce the subpoena that was addressed to the OEMs by the  
16 moving parties.

17           I have started -- I started conferencing with the  
18 moving parties and the OEMs at approximately 9:30 this  
19 morning, it is now ten minutes to 4:00. After several hours  
20 of discussions individually and jointly I reached the  
21 conclusion that there simply isn't sufficient information  
22 before me today to make a reasonable decision on to --  
23 whether to enforce or not to enforce, to what extent to  
24 enforce the subpoena.

25           As a consequence, I suggested to the moving parties

1       the best course of conduct -- and to the OEMs, that the best  
2 course of conduct would be to conduct some 30(b)(6)  
3 depositions of the OEMs in order to better understand what  
4 information is available, reasonably accessible, and the  
5 costs and burden that would be incurred in having to generate  
6 that information. With this information in hand it would be  
7 easy then -- not easy, but it will be easier to assess  
8 arguments on proportionality, arguments on burden, and so  
9 forth.

10           So I have asked the moving parties to come up with  
11 a proposal for dealing with taking 30(b)(6) depositions of  
12 the OEMs, and adjourning this motion until those depositions  
13 have been concluded and the parties -- all the parties,  
14 including the OEMs, have had an opportunity to confer and in  
15 an attempt to revise down the subpoena because at that point  
16 they will know that certain information, such as pricing on a  
17 VIN level, is simply not available, and so to ask for it is a  
18 nullity.

19           So with that in mind, I ask that the moving parties  
20 confer and come up with a proposal for conducting these  
21 30(b)(6) depositions, including who they want to depose, a  
22 list of areas where the OEMs can designate the 30(b)(6)  
23 representative to be deposed. When I say who I meant which  
24 of the OEMs, including truck and equipment distributors,  
25 small entities and non-core. And at this point I would like

1       the moving parties to tell me what they have come up with.

2                   MR. HEMLOCK: Thank you, Your Honor. Adam Hemlock  
3 from Weil, Gotshal & Manges on behalf of the Bridgestone and  
4 Calsonic defendants.

5                   Your Honor, the moving parties have conferred and  
6 came up with a list of five topics which I will read out for  
7 the record right now. These would be the 30(b)(6) topics  
8 that would form the basis of the depositions of the OEM  
9 family.

10                  Number one would be transactional purchase data for  
11 the parts at issue. Number two, procurement process and  
12 supplier selection and price adjustments for the parts at  
13 issue, and documents related thereto. Number three, vehicle  
14 cost data and other information. Number four, vehicle  
15 pricing process including process for setting and adjusting  
16 pricing, and documents related thereto. Number five,  
17 transactional sales data for sales of vehicles, and then  
18 there are four subparts. A, from OEMs to ADPs and TEDPs;  
19 B, from OEMs to distributors; C, from distributors to ADPs  
20 and TEDPs; and D, from ADPs and TEDPs to EPPs.

21                  And then one last note, references above to  
22 documents and data include information on format, where  
23 maintained, time period, current and legacy systems, and  
24 costs and burden of production. So that would be -- those  
25 would be the topics for the notice.

1                   SPECIAL MASTER: Understood. And in the interest  
2 of saving time, could you e-mail those to counsel for the  
3 OEMs.

4                   And then the next point that I have is who do you  
5 want to take 30(b)(6) depositions of? When do you want to  
6 take those depositions? How much time do you need to conduct  
7 those depositions?

8                   MR. WILLIAMS: Excuse me. I apologize.

9                   SPECIAL MASTER: Mr. Williams?

10                  MR. WILLIAMS: Steve Williams for the end payors.

11                  There is one category that I should have and would  
12 like to propose adding to this for this subcategories and  
13 transactional sales data, which would be direct sales by OEMs  
14 to customers such as fleet customers. Thank you.

15                  MR. HEMLOCK: Thank you, Your Honor. Our proposal  
16 would be as follows. In terms of the who, our thought would  
17 be that there would be one -- there would be one deposition  
18 for each what we will call OEM family. So, for example, my  
19 understanding is there are several -- two or three BMW  
20 entities who are recipients of subpoenas, one of them may be  
21 a manufacturing entity, one may be a sales entity, one may be  
22 a finance entity. We would be seeking one deposition of the  
23 entire family, and the members of that family could decide  
24 who would be deposed and who they want to educate on the  
25 various topics, and obviously to the extent that certain of

1 those entities house certain data or information then perhaps  
2 employees from those entities would be most appropriate but  
3 we would leave it to them, but we would expect, however, that  
4 that 30(b)(6) witness be prepared to testify on behalf of all  
5 of the entities in the family.

6 SPECIAL MASTER: And would you address -- identify  
7 yourself, sir, for the record.

8 MR. CAROME: Patrick Carome from Wilmer Hale on  
9 behalf of the Denso defendants.

10 To the extent an OEM entity is -- has a -- is  
11 substantially involved in the truck and equipment sales --  
12 manufacturing and sales, there probably needs to be a second  
13 30(b)(6) deposition for that entity because we don't think we  
14 can cover both passenger vehicles and trucks and equipment in  
15 the same deposition.

16                   SPECIAL MASTER: All right. Is it your -- would  
17 you please address the issue -- I think Mr. Carome addressed  
18 truck and equipment, they want a 30(b)(6) dep of the truck  
19 and equipment. Would you please address non-core, small  
20 entities and distributors.

21 MR. HEMLOCK: Okay. So our proposal regarding the  
22 OEM families is meant to address the non-core entities, at  
23 least based on the understanding that the non-core entities  
24 are all affiliated with some core entity and thus they would  
25 be treated as one family for the deposition.

1           Our position on the smaller OEMs is that there  
2 should be no distinction. In other words, the smaller OEM  
3 family should also be subject to the same order and have  
4 those OEM families deposed for the reasons that we have laid  
5 out in the briefing. They may be smaller relative to some of  
6 the other entities but they nevertheless sell millions of  
7 cars a year, they are some of the biggest corporations in the  
8 world.

9           The plaintiffs -- the indirect plaintiffs premise  
10 some of their damages and some of their claims on purchases  
11 of those cars, so we think at least at this stage there is no  
12 reason to distinguish. That being said, we could probably  
13 during the period that we propose to conduct the depositions  
14 start with some of the larger ones and perhaps push the  
15 smaller ones towards the tail end.

16           SPECIAL MASTER: And what about distributors?

17           MR. HEMLOCK: Distributors, our understanding, and  
18 we could confirm this, is that the OEMs themselves may have  
19 the data that we would otherwise seek from the distributors,  
20 and obviously if that were the case we would have no interest  
21 in doing two different depositions. I think we would want to  
22 explore whether an OEM family could cover whichever  
23 distributor that they use, and if not then we would probably  
24 have to take a deposition of --

25           SPECIAL MASTER: My understanding, as I recall from

1      the briefs, that there are distributors for a foreign parent  
2      where there is no manufacturing operations in the United  
3      States, so the data may rest outside of the United States.  
4      In a case like that, what do you envision doing with that  
5      distributor?

6                    MR. HEMLOCK: I think -- well, at a minimum we  
7      would want whatever information the distributor has. If the  
8      distributor is purchasing automobiles from a factory abroad  
9      and then reselling them in the United States, they certainly  
10     are going to have the downstream information we need. I'm  
11     assuming the distributor is either selling to another entity  
12     who then distributes them out or distributing them directly  
13     to ADPs, but in either instance they would have that sale  
14     data.

15                  As to the upstream, if it is just a distributor in  
16     the United States I think it is highly unlikely that they  
17     will have information related to the purchases of parts but  
18     we can only get whatever they have.

19                  SPECIAL MASTER: All right. Mr. Williams, you are  
20     chomping at the bit.

21                  MR. WILLIAMS: One comment. Steve Williams on  
22     behalf of the end payors.

23                  Of the smaller SCC group, as they refer to  
24     themselves, we would want to not defer Subaru of that group,  
25     the others we could, as Mr. Hemlock suggested, move back in

1       the process, but Subaru -- those entities we think should be  
2       in the front given their prominence in a number of the guilty  
3       pleas.

4                   SPECIAL MASTER: I didn't hear Mr. Hemlock say he  
5       would move them to the back. Did I miss that?

6                   MR. WILLIAMS: I just wanted to be clear on that.

7                   SPECIAL MASTER: All right. Next, how long do  
8       you -- how much deposition time do you need?

9                   MR. HEMLOCK: So we have conferred, and looking  
10      frankly at the topics and the number of subjects that need to  
11      be addressed, we think a maximum of 14 hours. Obviously as  
12      with all depositions we would endeavor to be efficient, and  
13      perhaps we won't need all 14 with all parties. Some of the  
14      families may be smaller or, as you pointed out, for a family  
15      that doesn't have purchasing operations in the United States  
16      we would likely need less time, but I think 14 hours per  
17      family would be an appropriate maximum.

18                  SPECIAL MASTER: All right. When would you propose  
19      that this starts?

20                  MR. HEMLOCK: Our thought, Your Honor, is that we  
21      would try to start in two weeks, two weeks from your order,  
22      and that they should be completed within 45 days.

23                  SPECIAL MASTER: Okay. I think you have covered  
24      what I need to know.

25                  MR. HEMLOCK: I think that's it.

1                   SPECIAL MASTER: Who wants to address from the  
2 opposing parties?

3                   MR. KASS: Your Honor --

4                   SPECIAL MASTER: Identify yourself, Counsel.

5                   MR. KASS: Colin Kass for Chrysler.

6                   I don't want to address all the issues, I just want  
7 to address a few of them, and then I think others will want  
8 to address certain of the issues relating to the small SCCs,  
9 the non-core, and distributor SCC, and the truck and  
10 equipment as well.

11                  A couple things. We are just hearing this proposal  
12 for the very first time so we have not yet had an  
13 opportunity, so I think what we would request is that, first,  
14 before the order gets entered, an opportunity to review the  
15 proposal, they can share with us the Word version of this  
16 proposal, and then we would commit to providing comments very  
17 quickly, and then you can take those into account.

18                  There are a couple of things --

19                  SPECIAL MASTER: Counsel, my general process is  
20 that I would ask one of the moving parties to draft an order,  
21 share it with you, you would then be permitted to make  
22 suggestions for revisions, alterations or deletions, and then  
23 if you are satisfied with it, it would then be signed.

24                  MR. KASS: Okay. Thank you, Your Honor. One thing  
25 that we would like to -- I would like to address now is the

1      14 hours. The federal rules put in a seven-hour presumptive  
2      limit, and there has been no showing that we need to go  
3      beyond the seven hours. You know, I think we should -- that  
4      should be the presumptive limit to start with, and then if  
5      that doesn't work then we can address that later.

6                The last thing I just want to mention -- well, one  
7      other thing first on procedure. To start the depositions in  
8      two weeks, I mean, with a list that is this long and getting  
9      into the details, it is going to take a lot longer than two  
10     weeks just to figure out exactly what all the various systems  
11     are and to do our own due diligence. So if they expect this  
12     to be productive there needs to be an adequate time for us to  
13     actually dig in and provide the -- to get our 30(b)(6)  
14     deponent prepared, especially when this would be sort of a  
15     novel approach where you're effectively requiring that one  
16     spokesperson be designated on behalf of multiple entities,  
17     usually it is an entity that designates a spokesperson, so  
18     this is a departure from that and it requires multiple  
19     different investigations and coordination.

20               The last thing I just had mentioned --

21               SPECIAL MASTER: Would four weeks be sufficient?

22               MR. KASS: I think four weeks is in the right  
23     direction, Your Honor.

24               SPECIAL MASTER: All right. Thank you.

25               MR. KASS: The last thing I would like to mention

1       is this entire process, while I understand based on our  
2 session this morning that there are -- there's -- there may  
3 not be enough information on a part of the issues, which is  
4 what's available and what the burden is on our side, at least  
5 in our view of the rule is that there needs to be a  
6 substantial need that cannot otherwise be met, and the record  
7 is completely absent in terms of what the parties' submission  
8 was on what their substantial need was.

9           I mean, I don't believe that the Court would allow  
10 us to take depositions of them, but I don't want to waive the  
11 argument that at least in our view this process is only going  
12 to get at what we believe to be half of the relevant  
13 equation, and so I just wanted to note that for the record.

14           SPECIAL MASTER: Thank you. All right. Who wants  
15 to go next?

16           MR. SAVRIN: Good afternoon. Daniel Savrin from  
17 Morgan Lewis rising to speak on behalf of the domestic  
18 distributors.

19           For the record, I just want to set out that not  
20 only did we just learn about this process moments ago, but we  
21 just learned about the proposal that we sort of be pulled  
22 back in kind of backwards into this process and be pulled  
23 back into it with a very nebulous description of our  
24 families.

25           We have taken this matter very seriously on behalf

1      of my clients, three, of Jaguar Land Rover North America,  
2      Volvo Cars of North America, and the BMW group entities, and  
3      they served eight BMW group entities. At the outset when the  
4      subpoena was served in July of last year we came forward and  
5      we gave them information on our entities. It is written, in  
6      the record, there is a volume of information that we  
7      provided. We wrote letters, they didn't respond, providing  
8      them information about the nature of our companies that we  
9      represent and the background and their history. That's all  
10     attached to my declaration and my clients' declarations.

11                The other domestic distributors did the same thing.  
12     They undertook their responsibility very seriously. They had  
13     the burden to prove that we had documents and information  
14     that should be the subject of a motion to compel. They did  
15     not carry that burden. We came forward and we produced  
16     declarations that explained where documents and information  
17     are, and they replied with two paragraphs directed to us,  
18     none of which at all addressed the factual issues related to  
19     our companies, most of which are very obvious because we are  
20     consumer-facing companies and the nature of our operations  
21     are very publicly disclosed. So there is really no genuine  
22     need I think here for any further information.

23                The concept that they will go and depose various  
24     families of companies and just whatever they have they will  
25     have to give to us, we have already answered those questions.

1      For a company like Jaguar Land Rover, and obviously I'm  
2      speaking on behalf of a group but I will speak to the ones I  
3      know best, they know because it is publicly disclosed, it is  
4      on Monroney labels for heaven's sake, it is on every single  
5      car, that the cars are made in Coventry, England and the  
6      components come from Coventry, England, and if you want to  
7      know what the cost of that car is the place to go is  
8      Coventry, England. That's information we provided to them  
9      six or nine months ago. They have done nothing to my  
10     knowledge to try to get that information. There is no reason  
11     to burden a company like Jaguar Land Rover North America that  
12     sells 14,000 or 15,000 Jaguars a year and 70,000 Land Rovers  
13     with additional questions. They have answered these  
14     questions. To have to go through a 30(b)(6) and an ongoing  
15     process after that is inappropriate.

16           The same carries forward for other companies that  
17     are similarly situated, Volvo, Porsche and others, who  
18     basically have put forth in the record, the cars are made by  
19     a company outside of the United States, they don't have  
20     information on the component and assembly costs, they don't  
21     factor them into their own setting of cost. So in terms of  
22     Mr. Williams' kind of notion what they need is the full chain  
23     of information, these people can maybe put some information  
24     in the middle but without that other information the record  
25     is clear that it is divorced and not relevant, but they've

1       donated two paragraphs to try to address that point in their  
2 reply briefs. And the point there is that this information  
3 isn't like hidden, it is very obvious.

4                  To the extent that there may be a question, you  
5 know, for a BMW or Mercedes has a plant physically here in  
6 the United States, you know, for BMW I have told them -- I  
7 told them going back into August and July of last year, I put  
8 it in writing, and it is in the letters in the record, and  
9 the reality is those cars that are manufactured in the United  
10 States are primarily for sale outside of the United States  
11 and they are sold to a German corporation which may allocate  
12 some of them back to the United States at a price -- so there  
13 is a whole disconnect between this organization but it is all  
14 documented in the record that is before you. And basically  
15 they are trying to come back and say we want to burden these  
16 folks who have taken their obligation seriously, put this  
17 information before the Special Master, and say effectively  
18 regardless of your de minimis size for those that -- and I  
19 don't want to take Mr. Tucker's points away, but for those  
20 who are really truly de minimis size, you know, selling  
21 70,000 Volvos in a high water-mark year or less than 50,000  
22 Porsches, this is not -- this is not the stuff they really  
23 need. They don't need to burden those companies.

24                  And for the ones where the information is outside  
25 of the United States, their responsibility when they served

1      these subpoenas was to serve the OEMs if they really wanted  
2      that information. They elected not to. And frankly the  
3      burden the domestic distributors who have come forward and  
4      laid this all out at this point to say we need more  
5      information, well, I mean, maybe they feel they need more  
6      information because they don't believe what we have said or  
7      what actually is out in the public record but, you know, as I  
8      said, you go into any car lot, look at the Monroney label on  
9      these cars, figure out where they are made, and understand  
10     that they come from outside of the United States. If you  
11     want the information -- two-thirds of the information that  
12     they want relates to outside of the United States.

13                The end payor information that they want is not  
14      stuff that the domestic distributors would have, and to  
15      burden them with depositions and then the concept that after  
16      those depositions further discovery when it is pretty fairly  
17      established on the record that is before you that what they  
18      have is in the middle and they don't have any other pieces,  
19      and that information divorced from the other pieces is just  
20      one link in the chain and when they have no other parts of  
21      the chain they don't need what we have.

22                SPECIAL MASTER: What you are suggesting -- what  
23      I'm hearing is the deposition of your people is going to be  
24      very quick?

25                MR. SAVRIN: Well, in one sense it might be but in

1 the other sense the issue is now -- they have said -- they  
2 served eight BMW entities, they served a bank, they served an  
3 insurance company that all it does is resell a third-party's  
4 insurance, and I don't want to take too much away from what  
5 Mr. Ashby is going to say, and then they say, okay, bring  
6 them all together, bring in one designee for all of their  
7 records.

10 MR. SAVRIN: Right.

11 SPECIAL MASTER: As long as they have got the  
12 information from a parent they are fine with that?

13 MR. SAVRIN: The parent is in Germany and they  
14 didn't do anything.

15 SPECIAL MASTER: The parent is in Germany so you  
16 don't have it. Like I said, I think the deposition is going  
17 to be relatively quick, they don't have the information.

18                   MR. SAVRIN: It is a burden, it is a cost on my  
19 client when they have already put forward -- put before you  
20 in the record the answer to that, and so it is basically  
21 something in my mind kind of a burden on us for no practical  
22 purpose, and frankly I'm -- I would respond perhaps if they  
23 had invited us and let us know they wanted to include us in  
24 the mix for these depositions then we could have had a more  
25 informed discussion on that point. They basically stood up

1 at the rostrum here and announced to us for the first time as  
2 we sat here that they were pulling us backward into this.  
3 Quite frankly that isn't the way I thought it was going, and  
4 if there is a sense that there is a need for some of these  
5 and these might be productive I would say let them go forward  
6 with the 30(b)(6)s against the other entities, the entities  
7 that had been talking to them earlier today, and hold those  
8 in abeyance as to us and see whether that process works and  
9 whether any of our information after that process is done is  
10 at all necessary. I think that would be the better course  
11 here rather than to drag us into this maelstrom of  
12 depositions in a very short period of time where our clients  
13 would have to expend significant resources on counsel and  
14 other matters unless -- even if they were going to bear the  
15 cost I think it would be inequitable, but I don't hear them  
16 saying they would bear the cost.

17 SPECIAL MASTER: I heard Mr. Williams say that he  
18 would hold -- with the exception of Subaru, he would hold the  
19 small entities until the last, and it may be that he reaches  
20 a point where he's gotten enough information in the 30(b)(6)  
21 out of the main OEMs that he never gets to you. I don't  
22 know.

23 MR. SAVRIN: Right. And so I think maybe the  
24 appropriate course here is to hold those in abeyance and then  
25 after they have conducted those come back, and if we can't

1 agree to the conduct of the further ones, they come back and  
2 request you to reconsider and open us up for those  
3 depositions, but not to conduct them now.

4 SPECIAL MASTER: Thank you, Counsel.

5 MR. SAVRIN: Thank you.

6 SPECIAL MASTER: Next?

7 MR. TUCKER: Thank you, Special Master.

8 Robert Tucker with Baker Hostetler. I represent the  
9 Mitsubishi entities, but I'm here to argue on behalf of the  
10 smaller SCC opposition.

11 We are here because you believe that there is  
12 insufficient evidence before you to decide whether or not to  
13 grant or deny various portions of the motions before you, and  
14 therefore the parties want to proceed with 30(b)(6)  
15 depositions of the various entities to find out what data  
16 they have and what documents they have so that you can then  
17 make a determination.

18 But the point of the smaller SCC argument is that  
19 even if they took that deposition, they found every piece of  
20 data we have, where it is, how far back it is maintained, and  
21 then we even produced all of that data and documents, the  
22 evidence that is before the Court is that that evidence is  
23 going to be statistically insignificant to the parties.

24 The smaller SCCs each represent 2.1 percent of  
25 total sales market, and when you look at what actually

1      matters here, the vehicles that those entities would have  
2      even assembled in the United States that were then  
3      substantially sold in the United States, they are less than  
4      two percent of the entire market, and for those vehicles  
5      those entities didn't even procure all the parts for those  
6      vehicles. So what we are talking about is documents and data  
7      that does not only have huge holes in it but that is going to  
8      be statistically irrelevant to any analysis that the experts  
9      of the parties are going to conduct, and that is evidence  
10     that is before the Court, and that is evidence that has gone  
11     unrebutted by the parties.

12            It is the parties' burden here to demonstrate that  
13     they have met -- that they need documents and data from the  
14     SCCs. We have demonstrated that they don't, and that  
15     evidence that we have submitted hasn't indicated to the  
16     contrary.

17            Now, I heard three points that were made as to why  
18     they need documents from the smaller entities. One is the  
19     reasons were laid out in their brief. We don't believe they  
20     were. In fact, the motion to compel devoted one paragraph to  
21     the smaller entities. Their replies, the defendants again  
22     just one paragraph, and the end payor less than a page. They  
23     are not focusing us, they weren't in the briefs, they haven't  
24     met their burden to demonstrate a need for documents from the  
25     smaller SCCs, but not only have they not met that burden, and

1      we have put forth evidence to the Court, we have also put  
2      forth evidence that demonstrates that these -- even sitting  
3      for a 30(b)(6) deposition is going to be extremely burdensome  
4      to our clients. These topics are fairly broad and, in fact,  
5      I heard at the end of a lot of topics "and others". I'm not  
6      even sure what that means and how broad that can be  
7      interpreted, but essentially we are being asked to put forth  
8      witnesses to testify about every single part that was  
9      procured and some of these entities didn't even procure any  
10     parts. Every single sale of the vehicle downstream to the  
11     dealers and then every single sale of every vehicle  
12     downstream to the end payor when they haven't demonstrated  
13     that even if they have that information from the smaller  
14     entities it would be statistically relevant, the evidence is  
15     to the contrary.

16                The second reason is that they said we sell  
17     millions of vehicles a year. That's simply untrue. The  
18     evidence that is also before the Court demonstrates that we  
19     don't sell millions of vehicles a year. For example, my  
20     client, Mitsubishi, in 2014 sold around 76,000 vehicles, not  
21     millions. And last year they said they were some of the  
22     largest corporations in the world. Again, this is where the  
23     parties want to connect the foreign parents of the smaller  
24     distribution SCCs to be the OEMs here, but those aren't the  
25     entities they subpoenaed. They didn't subpoena Mitsubishi

1 Motor Corporation, they didn't subpoena BMW's foreign parent  
2 in Germany, they subpoenaed the domestic distribution  
3 entities here in the United States. The simple fact is that  
4 those entities are not very, very large entities. My client,  
5 for example, has one attorney in its legal department that  
6 handles all of its litigation. And in the declarations  
7 before the Court you have similar evidence from BMW, similar  
8 evidence from Porsche and Land Rover and Jaguar and Volvo and  
9 other entities that they don't have the sizable legal  
10 departments to be able to comply even with this request for a  
11 deposition.

15 MR. TUCKER: Thank you.

SPECIAL MASTER: Mercedes.

17 MR. SURPRENANT: Your Honor --

**18** SPECIAL MASTER: Please identify yourself.

19 MR. SURPRENANT: Dominic Surprenant, Quinn Emanuel,  
20 for the truck and equipment --

21 || SPECIAL MASTER: That's right.

22 MR. SURPRENANT: And I represent seven Daimler

23 truck entities. In our opposition, Your Honor, we pointed  
24 out, quoting from page 3, here it is impossible to determine  
25 whether the discovery that the truck and equipment direct

1      purchasers seek is, quote, proportional to the needs of the  
2      case because there is not a line in the motion or memorandum  
3      about why the truck and equipment direct purchasers need to  
4      have the discovery sought. It was ignored. There was not a  
5      line.

6                We also argued citing both an affidavit from  
7      Mr. Hayes and a Supreme Court case that heavy trucks are  
8      specially-ordered products and they are sold in a highly  
9      customized way. And the declaration that I will pull up,  
10     Your Honor, from Mr. Hayes, who is the manager of application  
11     engineering at Daimler Trucks North America, he first says in  
12     paragraph three that the definitions in the subpoena make no  
13     sense for heavy equipment manufacturers because it is highly  
14     customized, paragraph three.

15               Paragraph four, it is a short declaration so I'm  
16     going to read two paragraphs. Similarly the parties' request  
17     corresponds to a purchasing and sales process typical for  
18     passenger vehicles but not for the highly customized process  
19     used by the Daimler truck entities. Unlike passenger  
20     vehicles, Daimler's trucks are built according to  
21     specifications designed on a case-by-case basis in close  
22     collaboration with each particular dealer and customer. Over  
23     the past year truck sales orders have been generated from two  
24     to six vehicles on average, and those orders include custom  
25     requirements. The most basic negotiations will require the

1       customer to select dozens of distinct option codes at the  
2 highest level of customization. There are hundreds of  
3 customer-selectable options for each vehicle. On the most  
4 popular highway truck track model there are over 500 possible  
5 configurations for just cylinder fuel tanks, for just the  
6 fuel tanks.

7                 And here is the most important paragraph. As each  
8 truck is customized to the particular needs of the customer,  
9 manufacturing costs of different trucks can vary by tens of  
10 thousands of dollars. The prices charged to customers are  
11 also individually negotiated and depend on a number of  
12 customer-specific factors. Given that they would have been  
13 intimately involved in the design and the specification as  
14 well as negotiations of the price of each truck, they likely  
15 already have what information is relevant.

16                 And so what we said is is the subpoena, which is  
17 designed for automotive vehicles, makes little, if any, sense  
18 when applied to heavy truck manufacturers, and there was not  
19 a line -- not a line in -- they didn't carry their burden  
20 whatsoever. They don't dispute in their reply that there was  
21 not a line in the moving papers why the information sought  
22 from the truck and equipment subpoenaed parties was relevant,  
23 why they needed it. They can't possibly show its  
24 proportionate needs of the case without a line of support,  
25 and we called them on it in our opposition.

1           So what they say in their reply, Your Honor, is  
2 really astonishing. They don't respond to Mr. Hayes'  
3 declaration, they ignore it. What they say is the truck and  
4 equipment respondents also assert that the motion must be  
5 denied because there is not a line in the motion to compel  
6 describing why the subpoenaed information is relevant  
7 specifically to the truck and equipment direct purchaser  
8 claims.

9           They then say, however -- this is their entire  
10 discussion, Mr. Special Master. However, the subpoenaed  
11 documents and data are relevant to the truck and equipment  
12 direct purchasers' claims for the same reasons they are  
13 relevant to substantially similar claims raised by other  
14 plaintiffs' classes, reasons that have been described at  
15 length in the motion to compel.

16           That's no answer at all. We called them on it.  
17 This is very, very different.

18           SPECIAL MASTER: Counsel, let me just interrupt you  
19 at this point because the issue that is currently before me  
20 now is no longer the motion to compel and the opposition to  
21 the motion.

22           MR. SURPRENANT: Okay.

23           SPECIAL MASTER: The only issue before me now,  
24 because I have dictated it, is go out, moving parties, and  
25 explore from the opposing parties what data is available to

1       them that is readily accessible, that is relevant and that is  
2       not burdensome. You have been arguing the substance of the  
3       opposition to the motion to compel. All I am doing is I'm  
4       working on creating a discovery program on discovery. All  
5       right. That's -- so I understand your argument on the  
6       substance of the opposition. I'm not getting to it, I'm not  
7       going to address that.

8                    MR. SURPRENANT: Respectfully, Special Master, you  
9       are. You are proposing to order my seven Daimler truck  
10      entities to incur substantial burden preparing one witness to  
11      describe what data exists for seven companies when the  
12      plaintiffs -- when the issuing parties have totally failed,  
13      totally failed, not a line, there is not a line explaining  
14      why they get any discovery from the truck entities I  
15      represent. There must be some showing by the issuing parties  
16      that there is some relevance to this. This would be a  
17      substantial burden, Your Honor, and at the very minimum -- I  
18      mean, I just think it should be denied. I understand your  
19      Special Master's point, I understand it, and I think it might  
20      be relevant for some of the other entities, but not for the  
21      truck entities.

22                   There has been a wholesale complete absence by the  
23      issuing parties to justify any discovery whatsoever, so it is  
24      not as if they say well, we justified discovery but we  
25      haven't provided the Special Master with sufficient

1 information to where he can intelligently draw the line and  
2 so we are going to get some more information. I understand  
3 that, that may be a sensible path forward but not for the  
4 truck and equipment entities where they have completely  
5 failed to say a single word why they need discovery from us.  
6 This will not be simple, it will not be inexpensive, it will  
7 be cumbersome, and they have to do something. I mean, it has  
8 just been a complete failure to justify any discovery.

9 SPECIAL MASTER: Thank you, Counsel. I appreciate  
10 your argument.

11 MR. SURPRENANT: Thank you.

12 SPECIAL MASTER: All right. Sir, your name and who  
13 you represent.

14 MR. ASHBY: Joseph Ashby of Quinn, Emanuel,  
15 Urquhart & Sullivan. I represent Hyundai AutoEver America  
16 and Hyundai Motor America. I'm rising to speak on behalf of  
17 the non-core entities.

18 SPECIAL MASTER: I don't need to hear your  
19 argument, Counsel. I know what I'm going to do. All right.  
20 Thank you.

21 MR. ASHBY: Okay.

22 MS. SESSIONS: Mr. Special Master, Justina Sessions  
23 of Keker & Van Nest on behalf of the Honda entities.

24 On behalf of the larger OEMs that were in the  
25 discussion with you this morning, this is the first that we

1 have heard of this proposal, this is the first chance we are  
2 getting to digest these proposed deposition topics which I  
3 think as I have heard them are not limited to the  
4 availability of data but go into a lot of other substantive  
5 issues, but I would propose that as a way to start this  
6 process perhaps that we could begin the depositions as  
7 depositions on written questions because as the topics have  
8 been laid out right now Honda would need to prepare at least  
9 three witnesses, the three people from whom we submitted  
10 declarations in the record on the motion to compel, so it is  
11 not just a simple matter of putting up one person, so we are  
12 talking at least three depositions, and I think that doing  
13 this on written questions initially would also alleviate the  
14 need to have 7- or even 14-hour depositions in a lot of these  
15 cases if these are simple questions of what data do you have,  
16 you know, where is it kept, how far back does it go. We  
17 could much more easily answer those in writing under oath,  
18 which we could do, rather than doing this in a lengthy  
19 deposition process live that would be far more burdensome to  
20 the OEMs.

21 SPECIAL MASTER: Thank you. All right. I have had  
22 enough. I know what I'm going to do.

23 Let me preface by stating as I said in my  
24 individual meeting with all of the counsel this morning, I  
25 have been advised and I believe it to be accurate that this

1      is the largest case currently pending in the United States,  
2      and this subpoena is probably the largest subpoena that has  
3      ever been requested to be enforced anywhere in the United  
4      States. The reason it is so broad is because the case is so  
5      big. And as a consequence we have to engage in whatever  
6      measures are appropriate to accelerate the production of  
7      information to make sure we stay within our schedule, to do  
8      what is necessary to keep this case moving forward, and as to  
9      the parties that spoke in opposition I do apologize because  
10     we were moving along a track to try to negotiate something  
11     and in my estimation we simply ran out of time, we could have  
12     been here another full day and we don't have another day to  
13     give.

14               It is my decision to convert this into an order,  
15     and as I said, I'm going to give you an opportunity to take a  
16     look at what the order is and work with the moving parties to  
17     come up with something that reflects what I'm about to order  
18     and work in perhaps some of your concerns that the moving  
19     parties will accept.

20               So that being the case I'm going accept the  
21     proposal by the moving parties to take 30(b)(6) depositions.  
22     I'm going to accept the fields of inquiry that were presented  
23     by the moving parties. I ask that the moving parties  
24     immediately e-mail those fields of inquiry to all counsel in  
25     this case so they can get a leg up on what they are going to

1      be looking for. I'm going to cap the deposition time to  
2      12 hours. At this point I'm going to carve out or hold in  
3      abeyance the small entities, the distributors, and the  
4      non-core. I'm keeping truck and equipment in. I just feel  
5      that this is only an inquiry into what data is available.

6               It is not a question of -- I'm not making a ruling  
7      on whether this subpoena will ever be enforced as to truck  
8      and equipment because they may be correct, it is so  
9      individualized a transaction that it is inappropriate to put  
10     them in this class.

11               On the other hand, I'm only asking that the parties  
12     be allotted an opportunity to discover what information is  
13     readily discoverable, how it is maintained, how easily  
14     accessible it is so that they can make some good-faith  
15     negotiations to whittle down the largest subpoena that has  
16     ever been issued and perhaps alleviate some of the concerns  
17     that have been raised by the OEMs that have to comply with  
18     this subpoena.

19               With respect to the people that I have carved out,  
20     you are not off the hook, you will be coming back. There is  
21     going to be clearly another motion on this matter after the  
22     30(b)(6) depositions are concluded and the parties will  
23     naturally reach an impasse on what discovery can and cannot  
24     be produced. You are going to be back, and at that time I  
25     will address the entities that I have carved out. I will

1      also entertain the truck and equipment manufacturers' motion  
2      at that point to be carved out as well.

3            I believe that the request of four weeks to get the  
4      witnesses prepared is reasonable. And I think 45 days is  
5      also a reasonable period of time within which to complete  
6      these depositions.

7            I am sure with the caliber of counsel in this room  
8      if you need another ten days there should be no problem in  
9      getting an extension from opposing counsel to get these done  
10     in 55 days instead of 45.

11           I would ask that somebody on the moving side  
12     prepare an order to that effect, that it be given to the  
13     opposing counsel for their review and their input, and that  
14     if they can agree, that it be submitted to me for entry. If  
15     they cannot agree then I would ask that you give me the order  
16     and that the opposing parties give me a red-lined proposition  
17     where they set forth their arguments for or against an  
18     addition or deletions, and I will finalize what I think the  
19     most appropriate order at that time. Please recall you have  
20     to include the stipulation that this order will be subject to  
21     appeal before Judge Battani pursuant to the order appointing  
22     me Special Master in August of 19 -- it feels like 19 -- of  
23     2014. I feel like it is 19 something. All right. Are we  
24     clear on that?

25           MR. WILLIAMS: We are mostly clear. One question,

1 Your Honor. As to the small --

2 SPECIAL MASTER: Wait, wait, I want Subaru in.

3 MR. WILLIAMS: Thank you.

4 SPECIAL MASTER: I'm sorry. It is in my notes and  
5 I didn't hit it.

6 MR. HEMLOCK: Thank you very much, Your Honor.

7 Just two quick things. One, we will prepare a draft of the  
8 order, we will get that around as soon as possible. Two, if  
9 we could just ask that you order expedited briefing on any  
10 objection from the OEMs that would be obviously helpful.

11 SPECIAL MASTER: What is the normal -- so let's  
12 assume that we get an order a week from today, it is entered,  
13 what would be the normal objection period?

14 MR. CAROME: Normally it would be 21 days.

15 SPECIAL MASTER: What are you proposing?

16 MR. CAROME: Ten days.

17 MR. KASS: We would like at least 14, Your Honor.

18 SPECIAL MASTER: All right. 14 days is fine.

19 Mr. Williams, is that indigestion you are  
20 suffering?

21 MR. WILLIAMS: Figuratively only because we  
22 appreciate the rulings, our time is very constrained for the  
23 auto dealers and the end payors.

24 SPECIAL MASTER: It is four days, it is four days I  
25 have given them. Thank you, sir.

1           Yes, ma'am? Please identify yourself.

2           MS. KINGSLEY: Your Honor, Meredith Kingsley on  
3 behalf of Hatci, KMMG and HMMA.

4           With respect to the one deponent who will be  
5 speaking on behalf of this OEM family, will they be required  
6 to speak on behalf of members of the family who you have said  
7 are now held in abeyance?

8           SPECIAL MASTER: No. If we are talking non-core  
9 entities, no, they will not be required to speak on behalf of  
10 non-core entities.

11           MS. KINGSLEY: And domestic distributors and  
12 small --

13           SPECIAL MASTER: And domestic distributors and  
14 small entities, that's right.

15           MS. KINGSLEY: So they are only required to speak  
16 on behalf of one or a part of the family, not the entire  
17 family?

18           SPECIAL MASTER: That's correct.

19           MS. KINGSLEY: Okay.

20           SPECIAL MASTER: That's correct. Make sure that's  
21 in the order, please, that they are carved out.

22           MR. CHERRY: Your Honor, can I speak to that?

23           I don't think we anticipated one person. I mean,  
24 they may need an upstream person, a downstream person. They  
25 should bring whoever is necessary to address the topic.

1                   SPECIAL MASTER: I understand that. I assume that  
2 given the nature of her client one person may suffice in her  
3 case, but you are correct, when you go through the list of  
4 topics you may need an upstream person and a downstream  
5 person, you may need a salesperson, you may need a procuring  
6 person, you may need somebody in finance or accounting.

7                   MR. CHERRY: Yes. And the same with respect to a  
8 corporate family, if there is an entity that does the  
9 procurement at a manufacturing level, there is an entity that  
10 does the sales at a different level, they should bring people  
11 who can address that for the corporate family.

12                  SPECIAL MASTER: Understood.

13                  MR. CHERRY: Yes.

14                  SPECIAL MASTER: That would be my intentions.

15                  MR. CHERRY: Thank you.

16                  SPECIAL MASTER: Yes, ma'am?

17                  MS. SESSIONS: I'm sorry. Just to clarify, the  
18 time limits, does that apply per family or does that apply  
19 per witness, and then with the idea of bringing --

20                  SPECIAL MASTER: It is per witness.

21                  MS. SESSIONS: It is per witness?

22                  SPECIAL MASTER: Per witness, correct.

23                  MS. SESSIONS: Okay. So if Honda has to put up  
24 three --

25                  SPECIAL MASTER: They get 36 hours.

1 MS. SESSIONS: Okay.

2 SPECIAL MASTER: They get not more than 36 but not  
3 more than 12 per witness, so if they take three they only  
4 have 24 on the other two.

5 MS. SESSIONS: Okay. Understood. Thank you.

6 SPECIAL MASTER: Mr. Williams?

7 MR. WILLIAMS: I am going to make two comments.  
8 One, certainly I can speak for all of us, we will use as  
9 little time as we can with these witnesses.

10 My next topic is on a different issue, which is if  
11 we are done with the depositions one aspect of this motion  
12 that we think could be resolved because it doesn't relate to  
13 any of this is the Department of Justice productions, and we  
14 would ask that be ordered.

15 SPECIAL MASTER: Yes. Mr. Williams, one of us is  
16 having a senior moment because as I recall you stood up here  
17 about an hour ago and argued the Department of Justice  
18 production with the counsel for General Motors, and I ordered  
19 it.

20 MR. WILLIAMS: Correct, as to General Motors. I  
21 just want to be certain as to any of the others --

22 SPECIAL MASTER: It is as to all of the OEMs, they  
23 have to produce their DOJ information with the caveats that  
24 we discussed in your order.

25 MR. WILLIAMS: Thank you very much.

1                   MR. KASS: Your Honor, I just would like to address  
2 the last -- not the DOJ but the time limit issue. I think  
3 that, you know, they need a set amount of information to  
4 understand the systems. The number of people we need to put  
5 up really shouldn't change the total amount of time they need  
6 to examine the witnesses, and it really does impact the  
7 number of witnesses that frankly you are willing to put up if  
8 you know each one is going to be subject to 12 hours. We  
9 would suggest there should be a cap. It can be 12 -- you can  
10 have 12 hours per witness but there needs a cap per OEM  
11 family at least we believe, and we think that cap should be  
12 not more than 14 hours. There is no reason why they can't go  
13 through all of the -- through all of the -- whatever  
14 witnesses need to be put up and ask the questions that relate  
15 to their area.

16                   SPECIAL MASTER: Can you understand, however, the  
17 nature of the inquiry is such that with respect to Daimler  
18 they would need somebody in the procurement area, they would  
19 need somebody in the sales area, they would probably need  
20 somebody in the pricing area, whether that's in accounting or  
21 finance, whatever, they would need at least three different  
22 individuals to address these topics.

23                   MR. KASS: I would expect them to need two, maybe  
24 three, people. I think when you asked originally how long --  
25 you asked the parties how long they would need, they said

1 14 hours and that was with the concept they would address the  
2 five areas that they needed to cover and they believed they  
3 could cover those five areas in that amount of time. So if  
4 you want to give them a little bit extra, but to give them  
5 12 hours to cover each one of those areas I think is  
6 excessive.

7 SPECIAL MASTER: Mr. Williams, your thoughts?

8 MR. WILLIAMS: Your Honor, I think on behalf of all  
9 the moving parties we would agree to 14 hours for all of the  
10 topics we are talking about today, and if there is any  
11 instance where we think there might be a need for more when  
12 we talk --

13 SPECIAL MASTER: So if there's three witnesses you  
14 are dividing the 14 hours among the three?

15 MR. WILLIAMS: We will divide the 14 hours and if  
16 for any reason that's not sufficient then we will try to work  
17 it out and bring it to you if we cannot.

18 SPECIAL MASTER: Counsel, is that acceptable?

19 MR. KASS: That is, Your Honor.

20 SPECIAL MASTER: We will revise the order that way.  
21 Anything else? It has been a long -- oops. Mr. Martini is  
22 calling me.

23 MR. FENSKE: Me too, Your Honor. Dan Fenske from  
24 Mitsubishi Electric. Just one housekeeping matter.

25 I understand Your Honor is not entertaining

1 argument on the settlement privilege issue. I just wanted to  
2 understand, was your Your Honor planning to issue some sort  
3 of ruling on that separately or --

4 SPECIAL MASTER: No. What is going to happen is  
5 the reason I declined to address that is because it has been  
6 my experience that ruling on it could have a cascading effect  
7 on future negotiations. It is my hope that when the moving  
8 parties find out what is available in the system of the OEMs  
9 that negotiations will begin in a professional manner, and my  
10 hope is that the negotiations will go beyond not just the  
11 data that is available but let's start talking about the  
12 settlement privilege issue, let's start talking about the  
13 attorney-client privilege issue. I'm not going to rule on it  
14 today because I want to encourage negotiations that are going  
15 to occur in approximately 60 days or 75 days to be full and  
16 robust, and that's why I'm deferring it. I specifically am  
17 not ruling on it. I'm not ruling on the motion to compel.

18 MR. FENSKE: Understood. Thank you, Your Honor.

19 SPECIAL MASTER: Are we done? I want to thank you  
20 all, it has been a long day, but you have been very  
21 professional and I appreciate the way you have dealt with me.  
22 Thank you.

23 (Proceedings concluded at 4:42 p.m.)

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*CERTIFICATION*

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I, Robert L. Smith, Official Court Reporter of  
the United States District Court, Eastern District of  
Michigan, appointed pursuant to the provisions of Title 28,  
United States Code, Section 753, do hereby certify that the  
foregoing pages comprise a full, true and correct transcript  
taken in the matter of Automotive Parts Antitrust Litigation,  
Case No. 12-2311, on Thursday, March 24, 2016.

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*s/Robert L. Smith*  
\_\_\_\_\_  
Robert L. Smith, RPR, CSR 5098  
Federal Official Court Reporter  
United States District Court  
Eastern District of Michigan

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Date: 03/25/2016

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Detroit, Michigan

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